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5 Attorneys for Plaintiff
HOLLYNN D'LIL
6

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

CV10 5405

11 CASE NO.
12 Civil Rights

HOLLYNN D'LIL,

13 Plaintiff,
14

15 v.
16 BAY PARKING, LLC; ERCUMAN
17 KARADAG; EDWARD S. ASLANIAN;
18 ELEONORE M. ASLANIAN; DOES 1
19 through 50, Inclusive,
20 Defendants.

21 COMPLAINT FOR INJUNCTIVE &
22 DECLARATORY RELIEF AND
23 DAMAGES: DENIAL OF CIVIL
24 RIGHTS OF A DISABLED PERSON
25 IN VIOLATION OF THE AMERICANS
WITH DISABILITIES ACT OF 1990,
AND CALIFORNIA'S DISABLED
RIGHTS STATUTES

26 DEMAND FOR JURY TRIAL

27 [Proper Intradistrict
Assignment:
San Francisco/Oakland]

28 Plaintiff HOLLYNN D'LIL, on behalf of herself and all other
similarly situated disabled persons, hereby complains of
Defendants BAY PARKING, LLC, a California Limited Liability
Company; ERCUMAN KARADAG, an individual; EDWARD S. ASLANIAN,
who, on information and belief is the Trustee of the Aslanian
2006 Revocable Trust, the owner of the subject parcel; ELEONORE
M. ASLANIAN, who, on information and belief is the Trustee of
the Aslanian 2006 Revocable Trust, the owner of the subject

1 parcel; DOES 1 through 50, Inclusive (hereafter "Defendants"),
 2 and demands a trial by jury, and alleges as follows:

3

4 **INTRODUCTION**

5 1. Plaintiff HOLLYNN D'LIL is a person whose
 6 physical disabilities require the use of a wheelchair for
 7 mobility. She files suit against the owners, operators, lessors
 8 and/or lessees of the paid public parking lot located at or near
 9 38 - 8th Street, San Francisco, at the south corner of the
 10 intersection of 8th and Stevenson. Her goal is positive: to
 11 increase the number of downtown parking opportunities for the
 12 disabled. This particular parking lot is one of the few
 13 opportunities serving the Orpheum Theater where Plaintiff likes
 14 to attend.

15 2. The configuration of the parking lot, its paths
 16 of travel and parking stalls, and operational policies all deny
 17 basic access to persons with disabilities. The barriers include
 18 the absence of a designated disabled accessible parking space,
 19 the absence of an accessible route from the parking to the
 20 boundary of the site and valet booth and kiosk, and the absence
 21 of an accessible transaction counter.

22 3. These and other facilities at the parking lot all
 23 fail to provide the "full and equal" access required by Title
 24 III of the Americans With Disabilities Act of 1990; the
 25 California Disabled Rights Acts (sections 54 and 54.1ff Civil
 26 Code); and Title 24 of the California Code of Regulations (now
 27 known as the California Building Code). As a result, Plaintiff
 28 was denied, and continues to be denied, access and/or is

1 deterred from re-visiting the parking lot, all in violation of
 2 her Civil Rights to full and equal access, and is embarrassed,
 3 humiliated and upset, all to her statutory and general damage.
 4 Plaintiff seeks injunctive and injunctive relief requiring
 5 provision of access under the Americans With Disabilities Act of
 6 1990 at section 308(a); injunctive relief for "full and equal
 7 access" under California law; and statutory damages for
 8 Plaintiff under California law.

9

10 JURISDICTION AND VENUE

11 4. This Court has subject matter jurisdiction of
 12 this action pursuant to 28 U.S.C. 1331 and 1332.

13 5. Pursuant to pendant jurisdiction, attendant and
 14 related causes of action, arising from the same facts, are also
 15 brought under California law, including but not limited to
 16 violations of California Health & Safety Code Sections 19955 et
 17 seq., including Section 19959; Title 24 California Code of
 18 Regulations; and California Civil Code Sections 54 and 54.1 et
 19 seq.

20 6. Venue is proper in this court pursuant to
 21 28 U.S.C. 1391(b) and is founded on the fact that the real
 22 property which is the subject of this action is located in this
 23 district and that Plaintiff's causes of action arose in this
 24 district.

25 7. **Intradistrict Jurisdiction.** Under intradistrict
 26 as the real property that is the subject of this action is
 27 located in the San Francisco/Oakland intradistrict and
 28 Plaintiff's causes of action arose in the San Francisco/Oakland

1 intradistrict (a property located in San Francisco).

2

3 **PARTIES**

4 8. At all times relevant to this complaint,
 5 Plaintiff qualified as a "person with a disability," as this
 6 term is used under California law and under federal laws
 7 including but not limited to Title III of the Americans With
 8 Disabilities Act of 1990.

9 9. Plaintiff's physical condition and paralysis
 10 requires the use of a wheelchair for traveling about in public
 11 places.

12 10. Plaintiff is informed and believes that each of
 13 the Defendants herein, including DOES 1 through 50, inclusive,
 14 is the joint authority, controlling interest, owner,
 15 constructive owner, beneficial owner, trust, trustee, agent,
 16 ostensible agent, alter ego, master, servant, employer,
 17 employee, representative, franchiser, franchisee, joint
 18 venturer, partner, associate, parent company, subsidiary, board,
 19 commission, department, representative, or such similar
 20 capacity, of each of the other Defendants, and was at all times
 21 acting and performing, or failing to act or perform, within the
 22 course and scope of his, her or its authority as a joint
 23 authority, constructive owner, beneficial owner, agent, trust,
 24 trustee, ostensible agent, alter ego, master, servant, employer,
 25 employee, representative, franchiser, franchisee, joint
 26 venturer, partner, associate, parent company, subsidiary, board,
 27 commission, department, representative, or such similar
 28 capacity, and with the authorization, consent, permission or

1 ratification of each of the other Defendants, and is responsible
 2 in some manner for the acts and omissions of the other
 3 Defendants in proximately causing the violations and damages
 4 complained of herein, and have approved or ratified each of the
 5 acts or omissions of each other defendant, as herein described.
 6 Plaintiff will seek leave to amend when the true names,
 7 capacities, connections, and responsibilities of Defendants BAY
 8 PARKING, LLC; ERCUMAN KARADAG; EDWARD S. ASLANIAN; ELEONORE M.
 9 ASLANIAN; DOES 1 through 50, Inclusive, are ascertained.

10

11 **FACTUAL ALLEGATIONS**

12 11. The parking lot and its facilities, including its
 13 parking facilities, paths of travel, and other facilities, are
 14 each a "public accommodation or facility" subject to the
 15 requirements of Government Code sections 4450 et seq., Health &
 16 Safety Code Section 19955 et seq., and of the California Civil
 17 Code sections 51, 54, 54.1, and 54.3. On information and
 18 belief, each such facility has, since January 1, 1968, undergone
 19 unfinished "new construction," and/or "alterations, structural
 20 repairs, and additions," each of which has subjected the subject
 21 parking lot and its public facilities to state disabled access
 22 requirements per section 4456 Government Code, 19959 Health and
 23 Safety Code, and since July 1, 1982, per provisions of Title 24
 24 of the California Code of Regulations.

25 12. Plaintiff HolLynn D'Lil drives a lift-equipped
 26 van. On or about July 14, 2010, she attempted to patronize the
 27 subject parking lot in her van while downtown for entertainment
 28 at the Orpheum. However, she was unable to use the lot because

1 of its failure to provide access to the aforementioned
 2 facilities, and the failure of Defendants to modify their
 3 facilities, and/or policies practices and procedures to provide
 4 for her entry and use. She was forced to look for parking
 5 elsewhere, all to her personal damages, losing money and/or
 6 property interest. She seeks damages for actual denial and
 7 deterrence.

8 13. Plaintiff complained on site to the parking
 9 attendant, but who instead defended the "legality" of the
 10 parking lot. When Plaintiff asked for the name of the owner
 11 to complain in writing, the attendant identified BAY PARKING,
 12 LLC; and ERCUMAN KARADAG as the owners, and told her to write
 13 to them at 38 - 8th Street, San Francisco. Plaintiff did so
 14 and her letter was returned. On information and belief,
 15 Defendants have knowledge, and/or received other notice, of
 16 complaints like Plaintiff's regarding the inability of the
 17 disabled to use equally the facilities at the subject parking
 18 lot. Despite knowledge of the access problems, and complaints
 19 from other disabled patrons, and the passage of extended time
 20 since Plaintiff and other disabled persons first provided
 21 notice of these deficiencies, Defendants have failed to
 22 investigate these problems, and have failed to take the
 23 necessary action to provide legally required access features
 24 to allow "full and equal" use of the premises by physically
 25 disabled persons.

26 14. The removal of all such barriers was required
 27 by Title III of the ADA, section 302 and/or section 303 of the
 28 ADA, and California law.

1 15. Plaintiff would like to return and use the
2 facilities at the parking lot for her trips downtown, but is
3 prevented from doing so on a full and equal basis by the
4 barriers and discriminatory situation described herein.

5 16. On information and belief, as a result of all
6 Defendants' above stated acts and omissions, Plaintiff
7 suffered loss of her Civil Rights, suffered emotional damages
8 normally and naturally associated with denial of one's civil
9 rights and thereby being treated like a second class citizen,
10 all to her damage.

11 17. Moreover, Plaintiff and other similarly
12 situated disabled persons will continue to be damaged on a
13 continuous basis as long as Defendants fail to provide proper
14 disabled access in the respects complained of, as they will
15 either be discouraged from using subject parking lot, or would
16 make the visit despite the obstacles to access they would have
17 to encounter, and suffer additional discriminatory
18 experiences.

19 18. Plaintiff has no adequate remedy at law as to
20 the recurring damages facing her each time she returns to
21 these inaccessible facilities. Unless the relief requested
22 herein is granted, Plaintiff and many other physically
23 disabled persons will each suffer irreparable harm in that
24 their fundamental right to accessible public facilities while
25 patronizing the subject parking lot will be denied and abridged.

26 ////

27

28

FIRST CAUSE OF ACTION:

Violations OF Title III

of the Americans with Disabilities Act OF 1990

42 USC §§ 12101ff

5 19. Plaintiff repleads and incorporates, as if fully
6 set forth again herein, the factual allegations contained in
7 paragraphs 1 through 18, above.

8 20. In 1990 the United States Congress made findings
9 per 42 U.S.C. Section 12101 regarding physically disabled
10 persons, finding that laws were needed to more fully protect
11 "some 43 million Americans with one or more physical or mental
12 disabilities;" that "historically society has tended to isolate
13 and segregate individuals with disabilities;" that "such forms
14 of discrimination against individuals with disabilities continue
15 to be a serious and pervasive social problem;" that "the
16 Nation's proper goals regarding individuals with disabilities
17 are to assure equality of opportunity, full participation,
18 independent living and economic self sufficiency for such
19 individuals;" and that "the continuing existence of unfair and
20 unnecessary discrimination and prejudice denies people with
21 disabilities the opportunity to compete on an equal basis and to
22 pursue those opportunities for which our free society is
23 justifiably famous..."

24 21. Congress stated as its purpose in passing the
25 Americans with Disabilities Act (42 USC § 12101(b));

26 | It is the purpose of this act -

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against

1 individuals with disabilities;

2 (2) to provide clear, strong, consistent, enforceable
 3 standards addressing discrimination against
 4 individuals with disabilities;

5 (3) to ensure that the Federal government plays a
 6 central role in enforcing the standards established in
 7 this act on behalf of individuals with disabilities;
 8 and

9 (4) to invoke the sweep of Congressional authority,
 10 including the power to enforce the 14th Amendment and
 11 to regulate commerce, in order to address the major
 12 areas of discrimination faced day to day by people
 13 with disabilities. (Emphasis added)

14 22. As part of the Americans with Disabilities Act,
 15 Public Law 101-336, (hereinafter the "ADA"), Congress passed
 16 "Title III - Public Accommodations and Services Operated by
 17 Private Entities" (42 U.S.C 12181ff). Among the Act's "covered
 18 entities" are "public accommodations," "rental facilities,"
 19 "service establishments," and "commercial facilities."

20 23. Pursuant to Section 302 [42 U.S.C 12182], "[n]o
 21 individual shall be discriminated against on the basis of
 22 disability in the full and equal enjoyment of the goods,
 23 services, facilities, privileges, advantages, or accommodations
 24 of any place of public accommodation by any person who owns,
 25 leases, or leases to, or operates a place of public
 26 accommodation."

27 24. Among the general prohibitions of discrimination
 28 included in Section 302(b)(1)(A) are the following:

1 § 302(b)(1)(A)(i): "DENIAL OF PARTICIPATION. - It
 2 shall be discriminatory to subject an individual or
 3 class of individuals on the basis of a disability or
 4 disabilities of such individual or class, directly, or
 5 through contractual, licensing, or other arrangements,
 6 to a denial of the opportunity of the individual or
 7 class to participate in or benefit from the goods,
 8 services, facilities, privileges, advantages, or
 9 accommodations of an entity."

10 § 302(b)(1)(A)(ii): "PARTICIPATION IN UNEQUAL
 11 BENEFIT - It shall be discriminatory to afford an
 12 individual or class of individuals, on the basis of a
 13 disability or disabilities of such individual or
 14 class, directly, or through contractual, licensing, or
 15 other arrangements with the opportunity to participate
 16 in or benefit from a good, service, facility,
 17 privilege, advantage, or accommodation that is not
 18 equal to that afforded to other individuals."

19 § 302(b)(1)(A)(iii): "SEPARATE BENEFIT. - It shall be
 20 discriminatory to provide an individual or class of
 21 individuals, on the basis of a disability or
 22 disabilities of such individual or class, directly, or
 23 through contractual, licensing, or other arrangements
 24 with a good, service, facility, privilege, advantage,
 25 or accommodation that is different or separate from
 26 that provided to other individuals, unless such action
 27 is necessary to provide the individual or class of
 28 individuals with a good, service, facility, privilege,

1 advantage, or accommodation, or other opportunity that
 2 is as effective as that provided to others."

3 25. The acts and omissions at defendant's parking
 4 lot, as described herein, constitute "discrimination" in
 5 violation of Section 302(b)(1)(A).

6 26. Among the specific prohibitions against
 7 discrimination in the ADA include the following:

8 § 302(b)(2)(A)(ii): "A failure to make reasonable
 9 modifications in policies, practices or procedures
 10 when such modifications are necessary to afford such
 11 goods, services, facilities, privileges, advantages or
 12 accommodations to individuals with disabilities..."

13 § 302(b)(2)(A)(iii): "A failure to take such steps as
 14 may be necessary to ensure that no individual with a
 15 disability is excluded, denied services, segregated or
 16 otherwise treated differently than other individuals
 17 because of the absence of auxiliary aids and services,
 18 unless the entity can demonstrate that taking such
 19 steps would fundamentally alter the nature of the good,
 20 service, facility, privilege, advantage, or
 21 accommodation being offered or would result in an undue
 22 burden;"

23 § 302(b)(2)(A)(iv): "A failure to remove architectural
 24 barriers, and communication barriers that are
 25 structural in nature, in existing facilities... where
 26 such removal is readily achievable;"

27 § 302(b)(2)(A)(v): "Where an entity can demonstrate
 28 that the removal of a barrier under clause (iv) is not

1 readily achievable, a failure to make such goods,
 2 services, facilities, privileges, advantages, or
 3 accommodations available through alternative methods
 4 if such methods are readily achievable." The acts and
 5 omissions of Defendants set forth herein were in
 6 violation of Plaintiff's rights under the ADA, Public
 7 Law 101-336, and the regulations promulgated
 8 thereunder, 28 CFR Part 36ff.

9 27. The facilities, acts and omissions at defendant's
 10 parking lot, as described herein, constitute "discrimination" in
 11 violation of Section 302(b) (2) (A).

12 28. The removal of each of the barriers complained of
 13 by plaintiff as hereinabove alleged (i.e., in paragraphs 2 and
 14 3, above) were - at all times on or after January 26, 1992 -
 15 "readily achievable."

16 29. Further, at all times herein mentioned,
 17 modification of or removal of these barriers was "readily
 18 achievable" under the factors specified in the Americans with
 19 Disabilities Act of 1990, including but not limited to
 20 section 301(9) [42 U.S.C. 12181], and the Regulations adopted
 21 thereto.

22 30. Further, if Defendants are collectively able to
 23 "demonstrate" that it was not "readily achievable" for
 24 Defendants to remove each of such barriers, Defendants have
 25 failed to make the required services available through
 26 alternative methods which were readily achievable, as required
 27 by Section 302 of the ADA [42 U.S.C. 12182], or through
 28 reasonable modifications in policy, practices and procedures.

1 31. "Discrimination" is further defined under
 2 Section 303(a)(2) of the ADA, for a facility or part thereof
 3 that was altered after the effective date of Section 303 of the
 4 ADA in such a manner as to affect or that could affect the
 5 usability of the facility or part thereof by persons with
 6 disabilities, to include per Section 303(a)(2) [42 U.S.C.
 7 12183], "a failure to make alterations in such a manner that, to
 8 the maximum extent feasible, the altered portions of the
 9 facility are readily accessible to and usable by individuals
 10 with disabilities, including individuals who use wheelchairs."
 11 Additionally, for alterations to areas of a facility involving a
 12 "primary function," discrimination under the ADA, per Section
 13 303(a)(2) (42 U.S.C. 12183), also includes the failure of an
 14 entity "to make the alterations in such a manner that, to the
 15 maximum extent feasible, the path of travel to the altered area
 16 and the bathrooms, telephones, and drinking fountains serving
 17 the altered area, are readily accessible to and usable by
 18 individuals with disabilities." On information and belief, the
 19 subject building constitutes a "commercial facility," and
 20 Defendants have, since the date of enactment of the ADA,
 21 performed alterations (including alterations to areas of primary
 22 function) to the subject building and its facilities, public
 23 accommodations, and commercial facilities, which fail to provide
 24 facilities and paths of travel to such areas that are readily
 25 accessible to and usable by individuals with disabilities, in
 26 violation of Section 303(a)(2), and the regulations promulgated
 27 thereunder, 28 CFR Part 36ff.

28 32. Pursuant to the Americans with Disabilities Act,

1 42 USC 12188ff, Section 308, Plaintiff is entitled to the
 2 remedies and procedures set forth in Section 204, subsection
 3 (a), of the Civil Rights Act of 1964 (42 USC 2000a-3, at
 4 subsection (a)), as plaintiff is being subjected to
 5 discrimination on the basis of disability in violation of this
 6 title or has reasonable grounds for believing that she is about
 7 to be subjected to discrimination in violation of Sections 302
 8 and 303. On information and belief, Defendants have continued
 9 to violate the law and deny the rights of plaintiff and of other
 10 disabled persons to access this public accommodation. Pursuant
 11 to Section 308(a)(2), "[i]n cases of violations of
 12 Section 302(b)(2)(A)(iv)... injunctive relief shall include an
 13 order to alter facilities to make such facilities readily
 14 accessible to and usable by individuals with disabilities to the
 15 extent required by this title."

16 33. As a result of Defendants' acts and omissions in
 17 this regard, plaintiff has been required to incur legal expenses
 18 and attorney fees, as provided by statute, in order to enforce
 19 plaintiff's rights and to enforce provisions of the law
 20 protecting access for disabled persons and prohibiting
 21 discrimination against disabled persons. Plaintiff therefore
 22 seeks recovery of all reasonable attorneys' fees, litigation
 23 expenses (including expert fees) and costs, pursuant to the
 24 provisions of Section 505 of the ADA (42 U.S.C. 12205) and the
 25 Department of Justice's regulations for enforcement of Title III
 26 of the ADA (28 CFR 36.505). Additionally, plaintiff's lawsuit
 27 is intended not only to obtain compensation for damages to
 28 plaintiff, but also to require the Defendants to make their

1 facilities accessible to all disabled members of the public,
2 justifying "public interest" attorneys' fees pursuant to the
3 provisions of California Code of Civil Procedure Section 1021.5.

4 WHEREFORE, plaintiffs prays that this Court grant
5 relief as hereinafter stated:

6

7 **SECOND CAUSE OF ACTION:**

8 **Denial of Full and Equal Access to a Person with a Disability**

9 **In a Public Facility,**

10 **In Violation of California's Disabled Access Statutes**

11 34. Plaintiff repleads and incorporates by reference,
12 as if fully set forth again herein, the allegations contained in
13 Paragraphs 1 through 33 of this complaint and incorporates them
14 herein as if separately replied.

15 35. Plaintiff Hollynn D'Lil, and other similarly
16 situated physically disabled persons (whose physical conditions
17 require the use of a wheelchair or other mobility device are
18 unable to use public facilities at subject parking lot on a
19 "full and equal" basis unless such facilities are brought into
20 compliance with the provisions of California Health & Safety
21 Code sections 19955 et seq. Plaintiff is a member of that
22 portion of the public whose rights are protected by the
23 provisions of sections 19955 et seq. Health & Safety Code.

24 36. Under section 54.1 Civil Code, persons with
25 disabilities are entitled to "full and equal access" to public
26 accommodations. "Public accommodations" are further defined as
27 a building, structure, facility complex, or improved area which
28 is used by the general public and shall include parking lots,

1 paths of travel, counters, and attendant facilities.

2 37. Defendants participate in the operation of the
 3 subject public accommodation, subjecting the property and all
 4 such Defendants to the requirements of California's Disabled
 5 Rights statutes.

6 38. Health & Safety Code Section 19955 provides in
 7 pertinent part:

8 (a) The purpose of this part is to insure that public
 9 accommodations or facilities constructed in this state
 10 with private funds adhere to the provisions of Chapter
 11 7 (commencing with § 4450) of Division 5 of Title 1 of
 12 the Government Code. For the purposes of this part
 13 "public accommodation or facilities" means a building,
 14 structure, facility, complex, or improved area which
 15 is used by the general public and shall include
 16 auditoriums, hospitals, theaters, restaurants, hotels,
 17 motels, stadiums, and conventions centers.

18 39. Health and Safety Code Section 19956, which
 19 appears in the same chapter as 19955, provides, in pertinent
 20 part: "[a]ll public accommodations constructed in this state
 21 shall conform to the provisions of Chapter 7 (commencing with
 22 § 4450) of Division 5 of Title 1 of the Government Code...."

23 40. Section 19956 Health & Safety Code was operative
 24 July 1, 1970, and is applicable to all public accommodations
 25 constructed or altered after that date. On information and
 26 belief, portions of the subject building were constructed and/or
 27 altered after July 1, 1970, and portions of the subject building
 28 were structurally remodeled, altered and have undergone

1 structural repairs or additions after July 1, 1970. Such
 2 construction required such building and its public accommodation
 3 facilities to be subject to the requirements of Part 5.5,
 4 Sections 19955, et seq., of the Health and Safety Code, which
 5 requires provision of access upon "alterations, structural
 6 repairs or additions" per Section 19959 Health & Safety Code, or
 7 upon a change of occupancy (a form of "alteration").

8 41. Multiple construction, alterations, structural
 9 repairs and/or additions were completed on the subject parking
 10 lot property after the January 1, 1968 effective date of
 11 Government Code Sections 4450 et seq., and the July 1, 1970
 12 effective date of Health & Safety Code Section 19955-19959,
 13 legally requiring that proper access for disabled persons be
 14 provided in each and every regard complained of herein.

15 42. Construction or alteration at such facilities
 16 also triggered access requirements pursuant to section 4456
 17 Government Code and Title 24 of the California Code of
 18 Regulations. Further, section 19955 Health & Safety Code also
 19 requires that, "[w]hen sanitary facilities are made available
 20 for the public, clients or employees in such accommodations or
 21 facilities, they shall be made available for the physically
 22 handicapped." Title 24, California Code of Regulations
 23 (formerly known as the California Administrative Code and now
 24 known as the California Building Code), was in effect at the
 25 time of each alteration which, on information and belief,
 26 occurred at such public facility since January 1, 1982, thus
 27 requiring access complying with the specifications of Title 24
 28 whenever each such "alteration, structural repair or addition"

1 is carried out. Title 24 imposes additional access requirements
 2 with which Defendants have not complied, including additional
 3 requirements for accessible restrooms which serve the areas of
 4 alteration.

5 43. As a result of the actions and failure to act of
 6 Defendants and each of them, and as a result of the failure to
 7 provide proper disabled accessible facilities as above
 8 described, Plaintiff Hollynn D'Lil was denied her Civil Rights,
 9 including her right to full and equal access to public
 10 facilities, was embarrassed, humiliated and upset in a manner
 11 normally and naturally associated with denial of one's civil
 12 rights, all to her general damages in an amount within the
 13 jurisdiction of this Court.

14 44. Plaintiff seeks ongoing damages on a per-incident
 15 basis for each occasion of denial and/or basis.

16 45. As a result of the Defendants' continuing failure
 17 to provide proper access for disabled persons to use the public
 18 facilities, Plaintiff and other, similarly-situated disabled
 19 persons are being continually denied their rights to full and
 20 equal access to subject parking lot and its attendant
 21 facilities.

22 46. The acts and omissions of Defendants as
 23 complained of herein exist on a continuing basis and have the
 24 effect of wrongfully excluding, and/or discriminating against,
 25 Plaintiff and other members of the public who are physically
 26 disabled wheelchair users from full and equal access to the
 27 public facilities involved. Such acts and omissions continue to
 28 treat them as inferior and a second class citizens and serve to

1 discriminate against their on the sole basis that they are
2 physically disabled and require the use of a wheelchair for
3 movement in public places, or require the use of disabled
4 accessible facilities such as handicap parking; Plaintiff is
5 unable, so long as such acts and omissions of Defendants
6 continue, to achieve full and equal access to these public
7 facilities. The acts of Defendants have proximately caused and
8 will continue to cause irreparable injury to Plaintiff if not
9 enjoined by this court.

10 47. WHEREFORE, Plaintiff asks this court to
11 preliminarily and permanently enjoin any continuing refusal by
12 those Defendants which currently own, operate or lease the
13 premises, or who control such premises as the operating public
14 entities, to grant such access to Plaintiff and other similarly
15 situated persons, and to require such Defendants to comply
16 forthwith with the applicable statutory requirements relating to
17 access for the disabled. Such injunctive relief is provided by
18 section 19953 Health & Safety Code and California Civil Code
19 section 55. Plaintiff further request that the court award
20 statutory attorneys' fees, litigation expenses and costs to
21 Plaintiff pursuant to section 19953 Health & Safety Code, Civil
22 Code section 55, and Code of Civil Procedure section 1021.5, all
23 as hereinafter prayed for.

THIRD CAUSE OF ACTION:

Violation of California's Disabled Rights Acts

(§§54, 54.1 and 55 CIVIL CODE)

28 48. Plaintiff repleads and incorporates by reference,

1 as if fully set forth again herein, the allegations contained in
 2 paragraphs 1 through 47 of this complaint and incorporates them
 3 herein as if separately replied.

4 49. The aforementioned acts and omissions of
 5 Defendants and each of them constitute a denial of equal access
 6 to and use and enjoyment of these facilities by persons with
 7 disabilities, including Plaintiff Hollynn D'Lil. Said acts and
 8 omissions are also in violation of provisions of Title 24 of the
 9 California Administrative Code (later known as the California
 10 Code of Regulations and the California Building Code.)

11 50. On or about the above date complained of herein,
 12 and on other occasions certain to occur thereafter, including
 13 occasions of deterrence, Plaintiff Hollynn D'Lil has and will
 14 suffer violations of sections 54 and 54.1 Civil Code in that she
 15 has and will be denied full and equal access to the subject
 16 parking lot facilities on the basis that she is a physically
 17 disabled person.

18 51. Plaintiff is further informed and believes that
 19 before and after such dates, the named Defendants and each of
 20 them were made aware orally, in writing, and through the media
 21 and governmental sources of the inaccessibility of their public
 22 facility/business to disabled persons, such as Plaintiff, and
 23 other persons with disabilities similarly situated, and of the
 24 federal and state legal obligations of owners and operators of
 25 public facilities to make their facilities accessible to
 26 disabled persons. Despite being informed of such effect on
 27 disabled persons and the manner in which their practices and
 28 lack of acceptable facilities were continuing to discriminate

1 against disabled persons on a continuous basis, said Defendants
 2 and each of them knowingly and willfully failed and refused to
 3 take any steps to rectify this situation and to provide full and
 4 equal access for disabled persons to each public facility
 5 referred to herein.

6 52. At all times since Plaintiff's above specified
 7 complaints, and on information and belief for periods prior to
 8 this date, Defendants were on notice of the requirements of the
 9 law relating to provision for full and equal disabled access.
 10 Especially as Defendants were on full notice, each incident that
 11 Defendants deny or deter Plaintiff's access constitutes a new
 12 and distinct violation of her right to full and equal access to
 13 this public facility, in violation of Sections 54 and 54.1, et
 14 seq. Civil Code. In the event of a default judgment against any
 15 particular defendant, Plaintiff will seek an injunction
 16 requiring provision of all access called for in this complaint,
 17 plus damages of \$4,000 per incident of denial or deterrence as
 18 demonstrated at a prove-up hearing, plus reasonable attorneys'
 19 fees, litigation expenses and costs as set by the court, until
 20 the site is brought into full compliance with state and federal
 21 access laws protecting the rights of the disabled, or,
 22 alternatively, until the date of entry of default.

23 53. As a result of the denial of equal access to
 24 Defendants' facilities due to the acts and omissions of
 25 Defendants and each of them in owning, operating, and
 26 maintaining this subject public facility, Plaintiff Hollynn
 27 D'Lil suffered violations of her Civil Rights including but not
 28 limited to rights under sections 54 and 54.1 Civil Code, and

1 suffered emotional distress, embarrassment, upset and
 2 humiliation normally and natural associated with denial of one's
 3 civil rights, all to her damages as hereinafter stated.
 4 Defendants' actions and omissions to act constituted
 5 discrimination against Plaintiff on the sole basis that she was
 6 physically disabled and unable, because of the architectural
 7 barriers created by the Defendants in violation of the subject
 8 laws, to use the public facilities on a full and equal basis as
 9 other persons.

10 54. Plaintiff seeks ongoing damages on a per-incident
 11 basis for each occasion of denial and/or basis.

12 55. Subject to the terms of the preceding paragraph,
 13 Plaintiff also seeks damages against all Defendants for the
 14 violation of her rights as a person with a disability during her
 15 patronage at the subject parking lot, and, on information and
 16 belief, on occasions of deterrence or denial that are likely to
 17 occur thereafter, according to proof, pursuant to section 54.3
 18 Civil Code, including a trebling of all statutory and actual
 19 damages, general and special, available pursuant to section 54.3
 20 Civil Code. Plaintiff also seeks such damages for such
 21 Defendants' continuing maintenance of such facilities in an
 22 inaccessible condition. Plaintiff also seeks injunctive relief
 23 against all Defendants pursuant to section 55 Civil Code,
 24 requiring Defendants to make their facilities accessible to
 25 disabled persons in each of the respects complained of herein.

26 56. As a result of Defendants' acts and omissions in
 27 this regard, Plaintiff HOLLYNN D'LIL has been required to incur
 28 legal expenses and hire an attorney in order to enforce

1 Plaintiff's rights and enforce provisions of the law protecting
 2 access for persons with disabilities and prohibiting
 3 discrimination against persons with disabilities. Plaintiff
 4 therefore seeks recovery in this lawsuit for all reasonable
 5 attorneys' fees and costs incurred pursuant to the provisions of
 6 sections 54.3 and 55 Civil Code. Additionally, Plaintiff's
 7 lawsuit is intended not only to obtain compensation for damages
 8 to Plaintiff, but also to require the Defendants to make their
 9 facilities accessible to all disabled members of the public,
 10 conferring a significant public benefit, and justifying
 11 attorneys' fees, litigation expenses and costs pursuant to the
 12 provisions of section 1021.5 Code of Civil Procedure.

13 WHEREFORE, Plaintiff prays for damages and declaratory
 14 and injunctive relief as hereinafter stated.

15

16 **FOURTH CAUSE OF ACTION:**

17 **Damages and Injunctive Relief for Violation of Titles III**

18 **Of the Americans with Disabilities Act**

19 **Under California's Disabled Rights Act**

20 57. Plaintiff repleads and incorporates by reference,
 21 as if fully set forth again herein, the allegations contained in
 22 paragraphs 1 through 56 of this complaint and incorporates them
 23 herein as if separately repled.

24 58. Each violation of the Americans With Disabilities
 25 Act of 1990, as complained of in the First Cause of Action
 26 hereinabove (the contents of which is incorporated herein as if
 27 separately repled in full hereafter), is also a violation of
 28 section 54(c) and section 54.1(d) California Civil Code, further

1 and independently justifying damages, injunctive and other
2 statutory relief per section 54.3 and 55 California Civil Code.

3 59. As previously pled, Plaintiff seeks damages on a
4 per incident basis from her aforementioned visit and continuing
5 thereafter.

6 60. Plaintiff has no adequate remedy at law, and
7 unless the relief requested herein is granted, Plaintiff will
8 suffer irreparable harm in that they will continue to be
9 discriminated against and denied access to the specified public
10 facilities. Because Plaintiff seeks improvement of access for
11 persons with disabilities, which will benefit a significant
12 portion of the public, Plaintiff seeks attorneys' fees pursuant
13 to section 1021.5 California Code of Civil Procedure, section
14 54.3 and 55 Civil Code; and 19953 Health & Safety Code.

15 WHEREFORE, Plaintiff prays for relief as hereinafter
16 stated.

17

18 **FIFTH CAUSE OF ACTION:**

19 **Damages and Injunctive Relief under the Unruh Civil Rights Act**
20 **For violation of title iii of the**
21 **Americans with disabilities act**

22 61. Plaintiff repleads and incorporates by reference,
23 as if fully set forth again herein, the allegations contained in
24 Paragraphs 1 through 60 of this complaint and incorporates them
25 herein as if separately pled.

26 62. Each violation of the Americans With Disabilities
27 Act of 1990, as complained of in the First Cause of Action
28 hereinabove (the contents of which is hereby incorporated herein

1 as if separately replied in full hereafter), is also a violation
2 of section 51(f) of the Unruh Civil Rights Act, further and
3 independently justifying damages of \$4,000 per offense,
4 injunctive relief, and other statutory relief, all as previously
5 pled, per sections 52 and common law decision.

6 63. As previously pled, Plaintiff seeks damages on a
7 per incident basis from her aforementioned visit and continuing
8 thereafter.

9 64. As a result of Defendants' acts and omissions in
10 this regard, Plaintiff has been required to incur legal expenses
11 and attorney fees, as provided by statute, in order to enforce
12 Plaintiff's rights and to enforce provisions of the law
13 protecting access for disabled persons and prohibiting
14 discrimination against disabled persons. Plaintiff therefore
15 seeks recovery of all reasonable attorneys' fees, litigation
16 expenses (including expert fees) and costs, pursuant to the
17 provisions of Section 52 of the Civil Code. Because Plaintiff
18 seeks improvement of access for persons with disabilities, which
19 will benefit a significant portion of the public, Plaintiff
20 seeks attorneys' fees pursuant to section 1021.5 California Code
21 of Civil Procedure, section 55 Civil Code; and 19953 Health &
22 Safety Code.

SIXTH CAUSE OF ACTION:

VIOLATION OF GOVERNMENT CODE SECTION 12943

26 65. Plaintiff repleads and incorporates by reference,
27 as if fully set forth again herein, the factual allegations
28 contained in paragraphs 1 through 64 of this complaint.

1 66. Defendants' actions are in violation of
 2 Government Code Section 12948, and the corresponding Civil Code
 3 Sections 51, 54, and 54.1.

4 67. Plaintiff seeks injunctive relief, statutory and
 5 compensatory damages, punitive damages, and attorneys fees under
 6 the FEHA.

7 Wherefore, Plaintiff prays that the court grant relief
 8 as requested herein below.

9

10 **SEVENTH CAUSE OF ACTION**

11 **(Declaratory Relief)**

12 68. Plaintiff repleads and incorporates by reference,
 13 as if fully set forth again herein, the allegations contained in
 14 Paragraphs 1 through 67 of this complaint and incorporates them
 15 herein as if separately replied.

16 69. A present and actual controversy exists among the
 17 respective rights and obligations of Plaintiff and Defendants,
 18 and separately, as to the obligations that have been impressed by
 19 the aforementioned statutes against the parking lot property
 20 irrespective of past or future ownership. Plaintiff requests a
 21 judicial determination of her rights and such obligations in a
 22 declaration, and also as to whether and to what extent
 23 Defendants' conduct and the current configuration of the property
 24 violate applicable law.

25 70. Such a declaration is necessary and appropriate at
 26 this time in order that Plaintiff may ascertain her rights. Such
 27 declaration is further necessary and appropriate to prevent
 28 further harm or infringement of Plaintiff's Civil Rights.

1 Wherefore, Plaintiff prays the court grant relief as
 2 requested hereinbelow.

3

4 **EIGHTH CAUSE OF ACTION**5 **Violation of Business and Professions Code Section 17200**
 6 **Unfair Competition through Violation of California and State**
 7 **Law Protecting the Rights of Disabled Persons**

8 71. Plaintiff repleads and incorporates by reference,
 9 as if fully set forth again herein, the factual allegations
 10 contained in paragraphs 1 through 70 of this complaint and
 11 incorporate them herein as if separately replied.

12 72. On a continuous basis, the Defendants are engaged
 13 in the business of providing parking lot services.

14 73. Commencing within three years of the date of he
 15 original complaint filed in this action, Defendants have
 16 committed acts of unfair competition, as defined by Business and
 17 Professions Code section 17200, by providing facilities that are
 18 inaccessible to the disabled members of the general public,
 19 including, but not limited to the facilities listed in specified
 20 in paragraphs 2 and 3, above, all in violation of standards of
 21 sections 51, 54 and 54.1 et seq. Civil Code; Title III of the
 22 Americans With Disabilities Act of 1990; and the Americans With
 23 Disabilities Act Access Guidelines.

24 74. The acts and practices of the Defendants are
 25 likely to continue and therefore will continue to mislead to
 26 mislead the general public as to the true cost of providing the
 27 specified goods and services and their expected availability to
 28 members of the public with physical disabilities pursuant to

1 law.

2 75. As a direct and proximate result of the
 3 Defendants' conduct, Defendants have received and continue to
 4 receive unfair profits that rightfully belong to members of
 5 general public who have been adversely affected by Defendants'
 6 conduct, such as Plaintiff. Plaintiff has lost money and
 7 property due to Defendants' acts.

8 76. Plaintiff has no adequate remedy at law, and
 9 unless the relief requested herein is granted, Plaintiff will
 10 suffer irreparable harm in that she will continue to be
 11 discriminated against and denied access to the specified public
 12 facilities. Because Plaintiff seeks improvement of access for
 13 persons with disabilities, which will benefit a significant
 14 portion of the public, Plaintiff seeks attorneys' fees pursuant
 15 to sections 54.3 and 55 Civil Code, section 1021.5 Code of Civil
 16 Procedure, section 19953 Health & Safety Code, section 505 of
 17 the Americans with Disabilities Act, and section 504a of the
 18 Rehabilitation Act of 1973.

19 WHEREFORE, Plaintiff prays that the court grant
 20 relief as requested hereinbelow.

21

PRAYER FOR RELIEF

22 Plaintiff prays that this Court award damages and
 23 provide relief as follows:

24 1. Grant injunctive relief requiring that those of
 25 the Defendants which currently own, operate, control or lease
 26 the subject premises, repair the premises and render them safe
 27 to disabled persons, and modify their policies and procedures,

1 and otherwise provide "full and equal access" to the public
 2 areas herein complained of, and make such facilities "readily
 3 accessible to and usable by individuals with disabilities,"
 4 according to the standards of sections 51, 54 and 54.1 et seq.
 5 of the California Civil Code; Title 24 of the California
 6 Administrative Code; Sections 19955-19959 of the Health & Safety
 7 Code; Sections 4450-4456 of the California Government Code;
 8 Title III of the Americans With Disabilities Act of 1990; the
 9 Americans With Disabilities Act Access Guidelines; and provide
 10 full and equal access to physically disabled persons, including
 11 Plaintiff, in all manners required by such statutes and
 12 government regulations;

13 2. Retain jurisdiction over the Defendants until
 14 such time as the Court is satisfied that Defendants' unlawful
 15 policies, practices, acts and omissions, and provision of
 16 discriminatory, separate and unequal benefits, as complained of
 17 herein, no longer exist, and will not recur;

18 3. Issue a declaratory judgment that Defendants'
 19 actions and omissions, and failures, including to modify the
 20 premises in compliance with the law, and to make reasonable
 21 accommodations and reasonable modifications for Plaintiff and
 22 other similarly situated disabled persons violates the rights
 23 Plaintiff and other similarly situated persons rights under the
 24 Health & Safety Code Sections 19955-19959; Government Code
 25 Sections 4450-4455; Civil Code Sections 51, 54, and 54.1 et
 26 seq.; Americans With Disabilities Act of 1990, 42 U.S.C.
 27 sections 12101, et seq., and the regulations promulgated
 28 thereunder.

1 4. Issue a declaratory judgment regarding the
 2 obligations impressed by law against the parking lot, and
 3 declaring that Plaintiff is entitled to disabled accessible and
 4 usable subject parking lot facilities including its parking
 5 facilities, paths of travel, and counter facilities, and other
 6 facilities, so that they may make use of the public facilities
 7 and participate in the activities offered by Defendants without
 8 suffering discrimination or impediment on the basis of her
 9 disability;

10 5. An award of statutory and "actual" damages
 11 against all Defendants, including general damages and special
 12 damages, according to proof, against such Defendants pursuant to
 13 sections 52 and 54.3 Civil Code, and that these damages be
 14 trebled;

15 6. A permanent injunction pursuant to Business and
 16 Professions Code section 17203 restraining and enjoining the
 17 Defendants from continuing the acts of unfair competition set
 18 forth above;

19 7. During the pendency of this action, a preliminary
 20 injunction issue pursuant to Business and Professions Code
 21 section 17203 to enjoin and restrain Defendants from the acts of
 22 unfair competition set forth above;

23 8. That Defendants be ordered to restore to the
 24 public all funds acquired by the acts of unfair competition set
 25 forth above pursuant to Business and Professions Code section
 26 17203;

27 9. Award prejudgment interest on all compensatory
 28 damages;

1 10. Award all costs of this proceeding and all
2 reasonable attorneys' fees, litigation expenses and costs as
3 provided by law, including but not limited to those recoverable
4 pursuant to the provisions of sections 54.3 and 55 Civil Code,
5 section 1021.5 Code of Civil Procedure, section 19953 Health &
6 Safety Code, and section 505 of the Americans With Disabilities
7 Act; and

8 11. Grant such other and further relief as this Court
9 may deem just and equitable.

10

11 Dated: November 26, 2010

THIMESCH LAW OFFICES
TIMOTHY S. THIMESCH



14 _____
15 Attorneys for Plaintiff
16 HOLLYNN D'LIL

17

DEMAND FOR JURY TRIAL

18 Plaintiff demands a jury on all claims for which a
19 jury is permitted.

20

21 Dated: November 26, 2010



22 _____
23 Attorneys for Plaintiff
24 HOLLYNN D'LIL

25

26

27

28